Supreme Court, U. S.
FILED
JUN 4 1980
MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

MAY TERM, 1980

No. 79-1908

LEE VISION CENTER, INC.,

Petitioner,

v.

CHRISTINE VAUGHT, Individually and on behalf of all others similarly situated,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

HENRY KLEPAK
2200 Mercantile Commerce Bldg.
Dallas, Texas 75201

RICHARD A. SINZINGER
North Dallas Bank Tower
Suite 1127
Dallas, Texas 75230

Counsel for Petitioner

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled case on February 29, 1980.

1. CITATIONS TO OPINIONS BELOW

The trial in the District Court was bifurcated and its liability opinion (R. 422) and its damages Opinion (R. 617, 658) are unreported, printed in Appendix B hereto, *infra*, p. 28-41. The Circuit Court of Appeals rendered its decision per curiam and said decision is unreported, printed in Appendix B hereto, *infra*, p. 42.

2. JURISDICTION

The judgment of the Circuit Court of Appeals was entered on February 29, 1980, p. 42, *infra*. Rehearing was denied on April 8, 1980, and Rehearing En Banc was denied on April 8, 1980, printed in Appendix B hereto, *infra*, p. 43. On April 30, 1980, by order of the United States Circuit Judge Frank M. Johnson, the time within which to file a petition for writ of certiorari was extended to May 28, 1980, printed in Appendix B hereto, *infra*, p. 45. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

3. QUESTIONS PRESENTED

Whether the District Court is required to provide parties with adequate notice and opportunity to be heard prior to granting a summary judgment order to adhere to Rule 56 (c) of the Federal Rules of Civil Procedure when such parties are in reasonable expectation and reliance of a continued delay in said decision by the inactions of said Court?

Whether the Appellate Court is required to render an opinion when said opinion would have precedential value and when its Local Rule 21 for "per curiam" decisions includes a proviso "that an opinion would have no precedential value"?

4. STATUTES INVOLVED

Rule 56 (c) of the Federal Rules of Civil Procedure states:

> Motion and Proceeding Thereon. The Motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is

> no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Local Rule 21, "Affirmative Without Opinion" of the United States Court of Appeals for the Fifth Circuit states:

> When the court determines that any one or more of the following circumstances exists and is dispositive of a matter submitted to the court for decision: (1) that a judgment of the district court is based on findings of fact which are not clearly erroneous; (2) that the evidence in support of a jury verdict is not insufficient; (3) that the order of an administrative agency is supported by substantial evidence on the record as a whole; (4) that no error of law appears; and the court also determines that an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.
>
> In such case, the court may in its discretion enter either of the following orders: "AFFIRMED. See Local Rule 21," or "ENFORCED. See Local Rule 21."

5. STATEMENT

Respondent, CHRISTINE VAUGHT, instituted this action in the United States District Court for the Northern District of Texas, Amarillo Division, on July 23, 1974, alleging discrimination in employment on the basis of sex under Title VII of the Civil Rights Act of 1964, as amended, 29 U.S.C. 2000 (e) et. seq. and amending her complaint on December 2, 1974, alleging a class action under Rule 23, (b) (2) F.R.C.P.

The cause was tried before the Court without a jury in the week of June 28, 1976. By previous order, the trial was bifurcated, and that stage was devoted to the issues of

liability and not damages. After the conclusion of trial, the Court entered its Findings of Fact and Conclusions of law on October 21, 1976. (R.422) The District Court concluded that Petitioner Company has been violating 42 U.S.C. 2000 (e) et. seq. relating to sex discrimination in the rate of compensation paid to females given managerial responsibility, but that Petitioner Company has not been violating 42 U.S.C. 2000(e) et seq., with regard to any other subclass of employee and dismisses all claims under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. sect. 201 et seq.

The Respondent's Motion for Summary Judgment on class damages filed August 14, 1978, (R. 481) and order requiring briefs for same was filed August 16, 1978, (R.594). The Respondent Company filed its Motion for Leave to substitute Counsel on August 22, 1978, (R. 595) and order for same was filed August 28, 1978, (R. 597) and present counsel were notified of same by letter dated September 1, 1978, at which time the present counsel received four large (1'3" x 2') cartons of files on the case from the previous attorneys. Additional motions were filed by Respondent on October 11, 1978, (R. 598) and October 13, 1978. (R. 610) By letter dated October 12, 1978, (Appendix A hereto, *infra*, p. 20) and received October 17, 1978, the District Court notified counsel that a final ruling on the Motion for Summary Judgment would be reserved for later. Present counsel for the Petitioner relied on such correspondence to continue to read and familiarize himself with the voluminous files preceding his entry into the case. In addition, Petitioner's new counsel had to spend time obtaining and checking for answers to the written interrogatories and reconsideration of the scope of the class, as requested by counsel for Respondent. (Such motions by Respondent were

later denied by the District Court in orders of October 11, 1978, (R. 609) and October 16, 1978, (R. 616) respectively.)

By letter to the District Court Judge on October 26, 1978, the Petitioner's new counsel requested a two-week extension for filing a response to Plaintiff's Motion for Summary Judgment and requested "a hearing on the points raised in the response". By letter of October 30, 1978, (Appendix A hereto, *infra*, p. 22.) which was received by Petitioner on November 2, 1978, the District Court Judge did not grant the hearing requested and refused the two-week extension, stating his willingness to consider a response sent "prior to (his) final determination of the matter". Petitioner counsel sent immediately the Defendant's Opposition and Response on November 6, 1978. (R. 627) However, the Judge had not waited for any response and had granted Plaintiff's Motion for Summary Judgment on November 2, 1978, (R. 617) prior to receipt of the Judge's notice by Appellant.

Following the Summary Judgment Order, Petitioner has attempted to be "heard" and to indicate to the District Court the substantial and material fact issues which warrant a setting aside of the Order. Appellant has raised such issues in its Motion for New Trial (R. 630), Amended Motion for New Trial (R. 641, 659), Motion to Vacate (R. 648), and Motion for Relief from Judgment (R. 662), all of which were denied on or before June 7, 1979. (R. 664)

Notice of Appeal was filed initially on December 1, 1978. (R. 653) However, the Summary Order of November 2, 1978, (R. 617) had not included award of specific attorney fees and the appeal was dismissed on April 9, 1979, due to the lack of an entry of a final judgment in the District Court. The final Summary Judgment was entered in the District Court on April 26, 1979, (R. 658) and, following

denial of Petitioner's Motion for New Trial and Relief from Judgment, the notice of appeal was filed June 1, 1979. (R. 665).

Following notice of placement of appeal on Summary Calendar, the Appellant Court on February 29, 1980 rendered its decision: "Per Curiam: AFFIRMED. See Local Rule 21." and cited its leading case of *N.L.R.B. v. Amalgamated Clothing Workers of America*, 5 Cir., 1970, 430 F2d 966.

6. SUMMARY OF THE ARGUMENT

The District Court has entered, and the Appellate Court affirmed, a judgment against Petitioner without providing him proper notice nor an opportunity to be heard on the matter, as required by Rule 56 (c) of the Federal Rules of Civil Procedure and as interpreted in numerous decisions by the Fifth Circuit Court.

Secondly, in affirming the District Court judgment, the Appellate Court applied its own Local Rule 21 in affirming said judgment without opinion. The exception proviso of said Local Rule 21 provides specifically that the Court determine that an opinion would have no precedential value. The instant case and decision fits clearly this exception, and, therefore, Local Rule 21 should not have been applied to this case.

Both questions of application or misapplication of the Fifth Circuit Local Rule 21 and Rule 56 (c) of the Federal Rules of Civil Procedure merit consideration by the Supreme Court. The parameters to Rule 56(c) have been in dispute and must remain so until settled by the Supreme Court. Both the District Court and Appellate Court decisions are in direct conflict with precedent-setting cases on F.R.C.P.

Rule 56 (c) and Local Rule 21, respectively. Settlement of both questions by this Court is clearly in the public interest since such decision would settle the matter for the courts and litigants as to what constitutes notice and hearing under Rule 56 (c) and as to when Appellate Courts are or are not entitled to render decisions "per curiam."

7. ARGUMENT AND REASON FOR GRANTING WRIT

A. Misapplication of Rule 56(c)

The Appellate Court erred in failing to require the District Court to adhere to Rule 56 (c) of the Federal Rules of Civil Procedure by providing parties with adequate notice and opportunity to be heard prior to the granting of a summary judgment order.

The spirit of the Rule 56 (c) requires . . . notice and hearing". *Bowdidge v. Lehman*, 252 F2d 366, 368-369 (6th Cir. 1958). The Fifth Circuit Court cited *Bowdidge v. Lehman, Op. Cit.* at 769. in establishing its rule of strict adherence to the notice and hearing requirements of Rule 56 (c) and denying jurisdiction to a summary judgment order entered without a hearing of a motion for summary judgment and trial court did not have any rule fixing such time and some months after the motion was filed the District Court granted summary judgment without notice to Petitioner, order was in excess of jurisdiction." *Enochs v. Sisson*, 301 F2d 125, 126 (5th Cir. 1962). The granting of the summary judgment order in the instant case closely parallels the *Enochs* case in that no time was fixed for a hearing and months after the motion was filed, the District Court granted the summary judgment order without notice to Petitioner. Applying the *Enochs* rule, the summary judgment order should be reversed for lack of jurisdiction by the

Court in rendering the order without proper notice and without hearing.

The Fifth Circuit Court traditionally required strict adherence to Rule 56 of the Federal Rules of Civil Procedure in disposing of Motions for Summary Judgment, as stated in the applicable standard in its lead case of *National Screen Service Corp.*, 305 F2d 647, 651 (5th Cir. 1962):

> The law is well settled that in order to entitle the moving party to summary judgment, it must be clearly shown: (1) that there is not genuine issue to any material fact on the case; and (2) that he is entitled to a judgment in his favor as a matter of law. The rule should be invoked cautiously in order to allow a full trial where there is a bona fide dispute of facts between the parties. Summary judgment should be granted only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is, when no genuine issue remains for trial, and it is not the purpose of the rule to deny to litigants a right of trial if they really have issues to try, *Sartor et al, v. Arkansas Natural Gas Corp.*, 321 U.S. 620, 64 S. Ct. 724, 88 L.Ed 967; *Associated Press et al. v. U.S.*, 326 U.S. 1, 65 S.Ct. 1416, 89 L.Ed, 2013; *Eccles v. People's Bank of Lakewood Village.* 333 U. S. 426, 68 S. Ct. 641, 92 L.Ed. 784.

The continued reliance of this Court on the applicable principles stated in the *National Screen Service Corp.* decision has been stated in recent decisions of this Court. *Sierra Club v. Calloway*, 499 F2d 982 (5th Cir. 1974); *Munoz v. Inter. Alliance of Thea. Stage Emp.*, ECT 563 F2d 205, 207 (5th Cir. 1977).

In the instant case, the District Court failed to apply the Fifth Circuit standard to Plaintiff's Motion for Summary Judgment. The calculations in the Plaintiff's Motion (R.

481) do not demonstrate clearly the validity and accuracy of the damage alleged. Therefore, the standard of being "quite clear what the truth is" as required in *National Screen Service Corp., Op. Cit.* at 651, is clearly unfulfilled. Likewise, after being advised by the Appellant's new counsel of the intention to file a Response and Opposition soon (Appendix A hereto, *infra*, P. 21), the District Court's immediate granting of the Plaintiff's Summary Judgment Motion (R. 617, 624), without the Petitioner having opportunity to respond, does not satisfy the Court's standard that "the rule should be invoked cautiously . . . (and) summary judgment should not be granted if there is the "slightest doubt" as to the facts" *Id.* at 651. The District Court should have been alerted to the "doubt" of the accuracy of the figures in the summary judgment motion and/or the existence of genuine issues as to material facts by receipt of Petitioner's letter of October 26, 1978 (Appendix A hereto, *infra*, p. 21). Likewise, the ignoring of Appellant's requests for a hearing (Appendix A hereto, *infra*, p. 21) and two-week extension (Appendix A hereto, *infra*, p. 21) for response does not demonstrate the "cautious" invoking of the Summary Judgment Rule by the District Court. Hence, the District Court erred in its application of Rule 56 in the instant case.

The above was stated and argued in Appellant's Brief to this Fifth Circuit and, hence, the Appellant Court erred by failing to reverse the District Court judgment and to require the District to adhere strictly to Rule 56 (c) of the Federal Rules of Civil Procedure. The decision of the Appellant Court is believed to be in conflict with its own earlier decisions.

This issue would be worthy of granting of writ due to the need for litigants and District Courts to be able to predict

the position of the Appelate Court on the matter. Unless the Court clarifies its position and understanding of Rule 56 (c) of the Federal Rules of Civil Procedure, it will not be possible to forecast with any certainty the rulings likely by this Appellate Court. As stated by this Court:

> It is an essential part of the process of the creation of principles on which predictions can fairly be forecast as a basis conduct, accountability, or the like" *N.L.R.B. v. Amalgamated Clothing Workers of America*, 430 F2d 966, at 972 (5th Cir. 1970)

The decision of the court below in the instant case is directly in conflict with the traditional and recent decisions of the Fifth Circuit Court of Appeals. The parameters of Rule 56 (c) of the Federal Rules of Civil Procedure need to be defined or delineated more precisely to provide both courts and litigants with a clear understanding and expectation of the requisites for notice and hearing under said rule. Since the matter has been in dispute for some time and decisions in various circuits have not been in accord, the matter will likely remain in dispute until settled by the Supreme Court.

Clearly the question by this court is in the public interest since the interpretation of the rule can affect directly the due process rights of a party, as occurred in the instant case.

B. Misapplication of Rule 21

The Appellate Court erred in affirming without opinion the District Court judgment since an opinion on said appeal would have had precedential value in determining the parameters of Rule 56 (c) of the Federal Rules of Civil Procedure. When such opinion is of precedential value, the exception proviso of local Rule 21, applies and should prevent use of the rule and should prevent the Court from rendering

its decision without opinion. Said proviso requires that "the Court also determine that an opinion would have precedential value".

The Appellate Court has recognized the importance of this proviso of Local Rule 21 in its own precedential case (cited in the Appellant Court's Per Curiam decision) in *N.L.R.B. V. Amalgamated Clothing Workers of America*, 430 Fd2 966. at 972 (5th Cir. 1970), in part:

> But of decisive significance in each of these factors, singly or collectively, is the further judicial determination by the Court 'that an opinion would have no precedential value.'

It is here that the Court faces a heavy obligation.

In the instant case, an opinion by the Fifth Circuit Court has had significant precedential value in interpreting and establishing parameters for Rule 56(c) of the Federal Rules of Civil Procedure by delineating more precisely what constitutes notice and hearing under said rule.

Furthermore, the lead case of the Fifth Circuit states the exceptional use of its Local Rule 21:

> The Court, by the adoption of the Rule, affirms that it must be carefully and selectively employed. *Id.* at 972.

In the instant case, the unanswered issues regarding the requisites for notice and hearing under Rule 56(c) of the Federal Rules of Civil Procedure preclude the Court from having carefully and selectively employed its Local Rule 21 for this case.

This issue is worthy of Supreme Court consideration due to the Court's frequent use of Local Rule 21 in rendering appellate decisions and the Appellate Court's need for clear guidelines in the interpretation and use of said rule and

exceptions thereto. Additionally, in its decision in *N.L.R.B. V. Amalgamated Clothing, Op. Cit.* at 972, the leading and only significant Fifth Circuit Court decision rendered on said rule, the Fifth Circuit Court cautioned about its use and warned against its excessive use, and reiterated the Court's view of the importance of written opinions. A clear examination of Local Rule 21 by the Supreme Court would settle the confusion in the interpretation of the rule and its parameters and exceptions. Such ruling or interpretation of the rule and its parameters and exceptions would create the necessary "principles on which predictions can fairly be forecast," *Id* at 972.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

Henry Klepak

Richard A. Sinzinger
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing petition for writ of certiorari has been mailed by Certified Mail, return Receipt Requested, to Mr. Ron D. Daughtery, 4803 Montrose Blvd., Suite 11, Houston, Texas, 77006 and to Mr. Henry Rosenblum, 4803 Montrose Blvd., Suite 11, Houston, Texas 77006, Attorneys for Appellee, on this the 23rd day of May, 1980.

Richard A. Sinzinger

APPENDIX A

CORRESPONDENCE

STATE OF TEXAS
COUNTY OF DALLAS

AFFIDAVIT

Before me the undersigned authority on this day personally appeared a person known to me to be Richard A. Sinzinger and on his oath states:

> "I have examined the foregoing Exhibits or Correspondence, including Exhibit 1, Exhibit 1A, Exhibit 2, Exhibit 3, Exhibit 4, Exhibit 5, Exhibit 6, Exhibit 7, and Exhibit 8, and hereby certify that they are true and correct copies of part of the correspondence exchanged between the United States District Court, Northern District of Texas, Lubbock Division, and Counsel for the Petitioner."

_____
Richard A. Sinzinger

Given unto my hand and seal of office on this the 23rd day of May 1980.

_____
Notary Public in and for
Dallas County, Texas

Exhibit No. 1-B

Law Offices
KLEPAK & PASLEY
Mercantile Commerce Bldg., 22nd Floor
Dallas, Texas 75201
(214) 747-9992

Henry Klepak
William B. Pasley
Richard Turner
Richard Sinzinger

Of Counsel
Isaias Rodriguez Moreno
San Juan, Puerto Rico

August 22, 1978

Honorable Halbert O. Woodward
United States District Judge
P. O. Box 2838
Lubbock, Texas 79408

Re: Cause No. Civil Action No. 2-74-83
Christine Vaught v. Lee Vision Center, Inc.

Dear Judge Woodward:

A Motion for Leave to Substitute Counsel was filed last week with the Court in the above matter, along with a proposed Order which would substitute the firm of Klepak & Pasley and myself as counsel of record. I was advised at that time of a briefing schedule which requires a brief to be filed no later than September 5, 1978.

I hereby request a thirty (30) day extension for the filing of such brief in order to permit my review of the voluminous files which have been delivered to my office. Your consideration of this request will be greatly appreciated.

Very truly yours,

HENRY KLEPAK

HK/m
CC: Mr. Ron D. Daugherty
Barlow, Lacy, Smith & Pollard
17100 El Camino Real
Houston, Texas 77058
Mr. Theodore Shanbaum

PREVIOUS PAGE WAS BLANK

Exhibit No. 1

Law Offices
KLEPAK & PASLEY
Mercantile Commerce Bldg., 22nd Floor
Dallas, Texas 75201
(214) 747-9992
Of Counsel

Henry Klepak
William B. Pasley
Richard Turner
Richard Sinzinger

Isaias Rodriguez Moreno
San Juan, Puerto Rico

August 29, 1979

Ms. Elaine Sprang, Deputy
Office of the Clerk
United States District Court
P. O. Box F-13240
Amarillo, Texas 79189

Certified Mail No. 262202
Return Receipt Requested

Re: Civil Action No. CA 2-74-83
Christine Vaught v. Lee Vision Center, Inc.

Dear Ms. Sprang:

Pursuant to Appellate Rule 10E, I request that all correspondence of the Court on the above styled and numbered cause from August 14, 1978, to the present date be sent to the United States Court of Appeals, Fifth Circuit, 600 Camp Street, New Orleans, Louisiana 70130, as supplement to the transcript of the Appeal No. 79-2711, for this cause.

It is particularly important for the prosecution of this appeal that the Fifth Circuit Court be sent verified copies of the letters from Judge Halbert O. Woodward to William B. Pasley, dated October 30, 1978 and October 12, 1978, and the letters from William B. Pasley to the Honorable Halbert O. Woodward, dated October 26, 1978 and November 3, 1978 and the letter from Henry Klepak to the Honorable Halbert O. Woodward, dated August 22, 1978, and the letters from Richard A. Sinzinger to the Honorable Halbert Woodward, dated May 22, 1979 and May 18, 1979.

Thank you for your assistance.

Sincerely,

RICHARD A. SINZINGER

RAS/1

CC: Honorable Halbert O. Woodward
Chief Judge
Northern District of Texas
United States District Court
1205 Texas Avenue
Lubbock, Texas 79401

Certified Mail No. 262203
Return Receipt Requested

Mr. Henry Rosenblum
Attorney at Law
4803 Montrose Boulevard
Suite 11
Houston, Texas 77006

Certified Mail No. 262204
Return Receipt Requested

Mr. Ron D. Daugherty
Attorney at Law
4803 Montrose Boulevard
Suite 11
Houston, Texas 77006

Certified Mail No. 262205
Return Receipt Requested

Exhibit No. 1-A

Law Offices
KLEPAK & PASLEY
Mercantile Commerce Bldg., 22nd Floor
Dallas, Texas 75201
(214) 747-9992
Of Counsel

Henry Klepak
William B. Pasley
Richard Turner
Richard Sinzinger

Isaias Rodriguez Moreno
San Juan, Puerto Rico

August 29, 1979

Honorable Halbert O. Woodward
Chief Judge
Northern District of Texas
United States District Court
1205 Texas Avenue
Lubbock, Texas 79401

Certified Mail No. 262203
Return Receipt Requested

Re: Civil Action No. CA 2-74-83
Christine Vaught v. Lee Vision Center, Inc.

Dear Judge Woodward:

Pursuant to Appellate Rule 10E, I request that all correspondence of the Court on the above styled and numbered cause from August 14, 1978, to the present date be sent to the United States Court of Appeals, Fifth Circuit, 600 Camp Street, New Orleans, Louisiana 70130, as supplement to the transcript of the Appeal No. 79-2711, for this cause.

It is particularly important for the prosecution of this appeal that the Fifth Circuit Court be sent verified copies of the letters from Judge Halbert O. Woodward to William B. Pasley, dated October 30, 1978 and October 12, 1978, and the letters from William B. Pasley to the Honorable Halbert O. Woodward, dated October 26, 1978 and November 3, 1978 and the letter from Henry Klepak to the Honorable Halbert O. Woodward, dated August 22, 1978, and the letters from Richard A. Sinzinger to the Honorable Halbert Woodward, dated May 22, 1979 and May 18, 1979.

Thank you for your assistance.

Sincerely,

RAS/1

RICHARD A. SINZINGER

CC: Ms. Elaine Sprang, Deputy
Office of the Clerk
United States District Court
P. O. Box F-13240
Amarillo, Texas 79189

Certified Mail No. 262202
Return Receipt Requested

Mr. Henry Rosenblum
Attorney at Law
4803 Montrose Boulevard
Suite 11
Houston, Texas 77006

Certified Mail No. 262204
Return Receipt Requested

Mr. Ron D. Daugherty
Attorney at Law
4803 Montrose Boulevard
Suite 11
Houston, Texas 77006

Certified Mail No. 262205
Return Receipt Requested

Exhibit No. 2

UNITED STATES DISTRICT COURT
Northern District of Texas
United States Courthouse 1205 Texas Avenue
Lubbock, Texas 79401

Chief Judge

October 12, 1978

Mr. Ron D. Daugherty
Barlow/Lacy, Inc.
Attorneys at Law
17100 El Camino Real
Houston, Texas 77058

Mr. Hal Miner
Attorney at Law
1012 Fisk Building
Amarillo, Texas 79101

Mr. Henry M. Rosenblum
Attorney at Law
320 Executive Plaza, West
4635 Southwest Freeway
Houston, Texas 77027

Mr. Henry Klepak
Klepak & Pasley
Attorneys at Law
Mercantile Commerce Building, 22nd Flr
Dallas, Texas 75201

In re: *CA-2-74-83, Vaught, et al. v. Lee Vision*

Gentlemen:

The court has received plaintiffs' motion for summary judgment on class damages filed on August 14, 1978, in the above referenced cause. Although the court has received defense counsel's request for a thirty day extension to respond, no such response has been received. Therefore, the court is of the present opinion that plaintiffs' motion should be granted, but a final ruling will be reserved until later.

Counsel for the plaintiffs is requested to prepare a judgment in strict accordance with the data submitted with his motion for summary judgment, and the court will then finally determine the motion.

Yours very truly,

HALBERT O. WOODWARD
Chief Judge
Northern District of Texas

HOW/rgw

Exhibit No. 3

October 26, 1978

Honorable Halbert O. Woodward
Chief Judge
Northern District of Texas
United States District Court
United States Courthouse
1205 Texas Avenue
Lubbock, Texas 79401

Re: Cause No. CA-2-74-83
Vaught, et al v. Lee Vision

Dear Judge Woodward:

Defendant hereby requests an additional two week period within which to file a response to the Plaintiff's Motion for Summary Judgment and the proposed Judgment on class damages. We feel that after such response is filed a hearing on the points raised in the response would possibly be of benefit to the Court before a final ruling.

Your continued consideration and patience would be greatly appreciated.

Very truly yours,

WILLIAM B. PASLEY

WBP/m

CC: Mr. Ron D. Daugherty
Barlow, Lacy, Smith & Pollard
17100 El Camino Real
Houston, Texas 77058

Exhibit No. 4

UNITED STATES DISTRICT COURT
Northern District of Texas
United States Courthouse 1205 Texas Avenue
Lubbock, Texas 79401
October 30, 1978

Halbert O. Woodward
Chief Judge

Mr. William B. Pasley
Attorney at Law
Mercantile Commerce Building
22nd Floor
Dallas, Texas 75204

In re: CA-2-74-83, Vaught, et al. v. Lee Vision

Dear Mr. Pasley:

I have received your letter of October 26, 1978, requesting an additional two weeks within which to file a response to the Motion for Summary Judgment and Proposed Judgment in the above referenced cause. You are advised that the court is now considering the proposed judgment. No two week extension will be granted. However, if your response is filed prior to final determination of the matter now pending, it will be considered.

Yours very truly,

HALBERT O. WOODWARD
Chief Judge
Northern District of Texas

HOW:rgw

CC: Mr. Ron D. Daugherty
Barlow, Lacy, Smith & Pollard
17100 El Camino Real
Houston, Texas 77058

Exhibit No. 5

November 3, 1978

Honorable Halbert O. Woodward
Chief Judge, Northern District of Texas
United States District Court
United States Courthouse
1205 Texas Avenue
Lubbock, Texas 79401

Re: Cause No. 2-74-83
Vaught, et al v. Lee Vision

Dear Judge Woodward:

I am enclosing herewith original and copy of Defendant's Opposition and Response to Plaintiffs' Motion for Summary Judgment on Class Damages which I would appreciate your considering.

By copy of this letter I am forwarding a copy of this instrument to Plaintiffs' attorney. Your continued regard in connection with this matter will be greatly appreciated.

Very truly yours,

WILLIAM B. PASLEY

WBP/m

CC: Mr. Ron D. Daugherty
Barlow, Lacy, Smith & Pollard
17100 El Camino Real
Houston, Texas 77058
w/enclosure

CERTIFIED MAIL NO. 921496
RETURN RECEIPT REQUESTED

Exhibit No. 6

Law Offices

KLEPAK & PASLEY
Mercantile Commerce Bldg., 22nd Floor
Dallas, Texas 75201
(214) 747-9992

Henry Klepak
William B. Pasley
Richard Turner
Richard Sinzinger

Of Counsel
Isaias Rodriguez Moreno
San Juan, Puerto Rico

May 18, 1979

Honorable Halbert O. Woodward
Chief Judge, Northern District of Texas
United States District Court
1205 Texas Avenue
Lubbock, Texas 79401

Re: Cause No. Ca-2-74-83
Christine Vaught v. Lee Vision

Dear Judge Woodward:

Enclosed please find Defendant's Amended Motion for New Trial and Defendant's Motion for Relief From Judgment. A copy of the motions have been sent by certified mail to the attorneys of record for the Plaintiff with certificate of service attached thereto.

Very truly yours,

RICHARD A. SINZINGER

RAS: bp
Enclosure

Exhibit No. 7

Law Offices

KLEPAK & PASLEY

Mercantile Commerce Bldg., 22nd Floor
Dallas, Texas 75201
(214) 747-9992

Henry Klepak
William B. Pasley
Richard Turner
Richard Sinzinger

Of Counsel
Isaias Rodriguez Moreno
San Juan, Puerto Rico

May 22, 1979

Honorable Halbert O. Woodward
Chief Judge
Northern District of Texas
United States District Court
1205 Texas Avenue
Lubbock, Texas 79401

Re: Cause No. Ca-2-74-83
Christine Vaught v. Lee Vision

Dear Judge Woodward:

The Defendant requests an oral hearing on the Defendant's Amended Motion for New Trial and Defendant's Motion for Relief from Judgment which was sent by certified mail on May 18, 1979. A copy of this request has been sent by certified mail to the attorneys of record for the Plaintiff with certificate of service attached thereto.

Sincerely,

RICHARD A. SINZINGER

RAS: dd

CC: Ms. Elaine Sprang, Deputy
Office of the Clerk
United States District Court
P. O. Box F-13240
Amarillo, Texas 79189

CC: Mr. Ron Daugherty
4803 Montrose,
Suite 11
Houston, Texas
77006

CC: Mr. Henry M. Rosenblum
4803 Montrose, Suite 11
Houston, Texas 77006

Exhibit No. 8

UNITED STATES DISTRICT COURT
Northern District of Texas
United States Courthouse 1205 Texas Avenue
Lubbock, Texas 79401

Halbert O. Woodward
Chief Judge

May 24, 1979

Mr. Richard A. Sinzinger
Klepak & Pasley
Attorneys at Law
Mercantile Commerce Building
22nd Floor
Dallas, Texas 75201

Mr. Henry M. Rosenblum
Mr. Ron Daugherty
Attorneys at Law
4803 Montrose
Houston, Texas 77006

In re: CA-2-74-83, Vaught v. Lee Vision Center, Inc.

Gentlemen:

The defendant's amended motion for new trial and motion for relief from judgment or order filed in the above case will be heard before the court on oral argument in Lubbock, Texas on Monday, June 18, 1979, at 3:00 P.M.

All attorneys are ordered to be present at such time and place.

Yours very truly,

HALBERT O. WOODWARD
Chief Judge
Northern District of Texas

HOW: rgw

APPENDIX B
OPINIONS AND JUDGMENT BELOW

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

CHRISTINE VAUGHT, Individually
and on behalf of all others
similarly situated, Plaintiffs,

vs. CIVIL ACTION No. 2-74-83

LEE VISION CENTER, INC.
Defendant,

JUDGMENT

On the 28th day of June, 1976, came on to be heard before this Court without a Jury, the above styled and numbered cause for trial on the merits, and all parties appeared by and through their counsel of record and announced ready for trial, whereupon the Court proceeded to hear the evidence from the witnesses and the arguments of counsel. Thereafter, on October 21, 1976, the Court entered its findings of fact and conclusions of law, wherein the Court found that it had jurisdiction over the Defendant under 42 U.S.C. Sec. 2000(e), *et seq.* and the Court having further found that the Defendant had engaged in certain discriminatory employment practices in violation of 42 U.S.C. Sec. 2000(e), *et seq.*, now therefore, in accordance with the findings of fact and conclusions of law previously entered in this action, it is hereby:

ORDERED, ADJUDGED AND DECREED, as follows:

I.

Defendant's policy and practice of discrimination against female employees who have been hired or promoted to the position of manager or who have been given the responsibilities and duties of store manager without receiving a rate of pay commensurate with that received by male managers is declared to be unlawful sex discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sec. 2000(e), *et seq.* (Hereinafter referred to as the "Act").

II.

Defendant's policy and practice with respect to the named Plaintiff, CHRISTINE VAUGHT, of failing to pay her a commensurate rate of pay received by male employees, while she was given the responsibilities and duties of store manager and her subsequent termination is hereby declared to be unlawful sex discrimination in violation of the act.

III.

Plaintiff's institution of this suit was timely filed within the ninety (90) day applicable period from receipt of the Equal Employment Opportunity Commission's "right-to-sue" letter, and that such time began to run from such date and not from the date of the receipt of an earlier letter advising that Defendant had failed to enter into a conciliation agreement.

IV.

Defendant's conduct herein constitutes a willful violation pursuant to the provisions of the Fair Labor Standards Act 29 U.S.C. Sec. 201, *et seq.*, therefore falling within the three (3) year limitation period for commencement of an action from the date of its accrual. However, the Court orders that all title 29 class action claims are dismissed, since Sec. 256 requires written consent from each member of the class not named as Plaintiffs and no such consents were filed.

V.

Defendant has retail outlets or establishments under 29 U.S.C. Sec 213(a) (2) (iv); such establishments are exempt provided they do less than $250,000.00 annual gross dollar volume. Since there are no proper "Title 29" claimants who were employed in Defendant's only store which had an annual gross dollar volume in excess of $250,000.00 per year, the Defendant has not violated the provisions of the Fair Labor Standards Act.

VI.

Defendant is hereby permanently enjoined from the policies and practices of sex discrimination enumerated in paragraphs I and II.

VII.

Plaintiff shall recover all costs of this suit against this Defendant.

VIII.

Plaintiff shall be entitled to damages, reasonable attorney fees and other costs of court at a second trial to be set by the Court in this bifurcated proceeding.

DONE AT LUBBOCK, TEXAS this 29th day of November, 1976.

HALBERT O. WOODWARD
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

CHRISTINE VAUGHT, Individually
and on behalf of all others
similarly situated,
Plaintiffs,

v. CIVIL ACTION NO. CA-2-74-83

LEE VISION CENTER, INC.
Defendant.

JUDGMENT

This action came on for consideration before the court, Honorable Halbert O. Woodward, District Judge, presiding, and the issues having been considered and a decision having been duly rendered,

It is Ordered and Adjudged that the following individually named persons recover of the defendant, Lee Vision Center, Inc., the sum indicated below, with interest at the rate of 9% per annum as provided by law, and that the named plaintiff, Christine Vaught, recover of the defendant, Lee Vision Center, Inc., her costs of action.

Group A

Pyrez, Carol	$ 424.00
Duke, L. K.	442.04
Almanza, A. B.	805.16
Brogdon, W. C.	1,916.50
Ratcliff, T. L.	442.04
McLennon, S.	863.52
Galvon, M. G.	5,986.20
Suarez, M. E.	869.20
Franham, S.	7,802.10
Exinia, M. E.	11,226.30
Vaught, C.	302.26
Heitz, Bobbie Jean	41.88
Capellini, O.	1,232.20

Martinez, B.	$ 915.00
Vargas, Yolanda	374.77
Acuma, S. B.	683.20
Mena, R.	461.57
Howard, Donalda	1,151.36
Vasquez, Maria	4,975.60
Dodd, J. L.	347.13
Lewis, S. E.	736.20
Goforth, D.	615.90
Tovar, E. E.	67.64
Rangel, C.	9,243.86
Almanza, A. B.	325.00
Duke, L. K.	551.47
Rindy, Edith	7,691.14
Pippin, J. E.	398.66
Massingill, P.	963.80
Contreras, B. L.	675.68
Dodson, L.	471.20
Wallace J. E.	2,030.42
Smith, H. R.	704.40
Brindley, L. B.	5,564.16
Morales, Annie	2,990.45
Herpeche, Sherry	8,910.20
Olivares, G. M. (Gonzales)	278.46
Braly, Helen	1,202.56

Group B

Kennedy, Martha	$15,339.97
Poss, Frances	29,285.26
Hall, Rose	34,425.09
Tabb, Mary	21,620.12
Cordova, J.	17,408.63
Williams, Virginia	18,058.66

Group C

Bradfield, Kathleen	$ 3,965.54
Campos, G.	3,806.40
Sanchez, B. L.	2,834.59
Echavarria, M.	1,045.80
Wagnon, B. A.	793.00
Collett, M. E.	1,411.17

Bunch, P. S.	709.20
Gurrola, S.	2,038.10
Juarez, U.	4,768.50

It is further ORDERED AND ADJUDGED that the named plaintiff, Christine Vaught, recover of the defendant, Lee Vision Center, Inc., the sum of $5,201.80, with interest thereon at the rate of 9 percent per annum as provided by law.

IT IS FURTHER, ADJUDGED AND DECREED:

That Defendant shall immediately adjust its wage structure and policies so as to pay male and female managers equally, commensurate with the criteria ordered herein, and further, Defendant is hereby permanently enjoined from discriminating against female employees on account of their sex with regard to comparable rates of pay, promotion, job assignment, and other terms and conditions of employment. Plaintiffs shall further be entitled to all costs of Court, including reasonable attorney's fees.

The Clerk will furnish a copy hereof to each attorney.

DATED this 2nd day of November, 1978 at Lubbock, Texas.

HALBERT O. WOODWARD
Chief Judge
Northern District of Texas

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

CHRISTINE VAUGHT, Individually
and on behalf of all others
similarly situated,
Plaintiffs,

v. CIVIL ACTION No. CA-2-74-83

LEE VISION CENTER, INC.
Defendant.

ORDER

Plaintiffs' Motion for Summary Judgment on Class Damages having been considered, and it appearing that notice of the motion was given to Defendant pursuant to 56(c) of the Federal Rules of Civil Procedure, and that the Defendant has not answered or replied to the motion; and the court having considered the record, including pleadings, depositions, and answers to interrogatories, and it further appearing that there is no genuine issue as to material facts, and that Plaintiffs are entitled to judgment as a matter of law; therefore,

IT IS ORDERED that Plaintiff's Motion for Summary Judgment be, and the same hereby is, granted.

IT IS FURTHER ORDERED that judgment is entered herein in favor of Plaintiffs and against Defendant, as follows:

For Damages to the Class:

(1) "Group A" — judgment in the amount of $84,683.23, plus interest at the rate of 9% per annum.
(2) "Group B" — judgment in the amount of $136,137.73, plus interest at the rate of 9% per annum.
(3) "Group C" — judgment in the amount of $21,372.30, plus interest at the rate of 9% per annum.

For Named Plaintiff, CHRISTINE VAUGHT:

Judgment in the amount of $5,201.80, plus interest at 9% per annum.

EXHIBIT "B"

Additional Relief:

That Defendant shall immediately adjust its wage structure and policies so as to pay male and female managers equally, Defendant is hereby PERMANENTLY ENJOINED from discriminating against female employees on account of their six with regard to rates of pay, promotion, job assignment, and other terms and conditions of employment.

The plaintiff is entitled to recover reasonable attorney's fees and the attorneys for plaintiff will furnish the court a detailed statement of the time expended and the necessary expenses in the above case with copies to the attorneys for the defendant and the appropriate judgment will then be entered.

The Clerk will furnish a copy hereof to each attorney.

DATED this 2nd day of November, 1978.

HALBERT O. WOODWARD
Chief Judge
Northern District of Texas

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

CHRISTINE VAUGHT, Individually
and on behalf of all others
similarly situated,
Plaintiffs

VS

CIVIL ACTION NO. CA-2-74-83

LEE VISION CENTER, INC.

Defendant.

FINAL SUMMARY JUDGMENT ON DAMAGES

Plaintiffs' Motion for Summary Judgment on Class Damages having been considered, and it appearing that notice of the motion was given to Defendant pursuant to 56(c) of the Federal Rules of Civil Procedure, and that the Defendant has not answered or replied to the motion, and the court having considered the record, including pleadings, depositions, and answers to interrogatories, and it further appearing that there is no genuine issue as to material facts, and that Plaintiffs are entitled to judgment as a matter of law; therefore,

IT IS ORDERED that Plaintiff's Motion for Summary Judgment be, and the same hereby is, granted.

IT IS FURTHER ORDERED AND ADJUDGED that, according to Class Damages, the following individually named persons recover from the Defendant LEE VISION CENTER, INC. the sum indicated below with interest at the rate of nine (9%) percent per annum as provided by law, as follows:

(1) "Group A" — judgment in the amount of $84,683.23, plus interest at the rate of nine (9%) percent per annum, as follows:

Pyrez, Carol	$ 424.00
Duke, L. K.	442.04
Almanza, A. B.	805.16

Brogdon, W. C.	$ 1,916.50
Ratcliff, T. L.	442.04
McLennon, S.	863.52
Galvon, M. G.	5,986.20
Suarez, M. E.	869.20
Franham, S.	7,802.10
Exinia, M. E.	11,226.30
Vaught, C.	302.26
Heitz, Bobbie Jean	41.88
Capellini, O.	1,232.20
Martinez, B.	915.00
Vargas, Yolanda	374.77
Acuma, S. B.	683.20
Mena, R.	461.57
Howard, Donalda	1,151.36
Vasquez, Maria	4,975.60
Dodd, J. L.	347.13
Lewis, S. E.	736.20
Goforth, D.	615.90
Tovar, E. E.	67.64
Rangel, C.	9,243.86
Almanza, A. B.	325.00
Duke, L. K.	551.47
Rindy, Edith	7,691.14
Pippin, J. E.	398.66
Massingill, P.	963.80
Contreras, B. L.	675.68
Dodson, L.	471.20
Wallace, J. E.	2,030.42
Smith, H. R.	704.40

Brindley, J. B.	$ 5,564.16
Morales, Annie	2,990.45
Herpeche, Sherry	8,910.20
Olivares, G. M. (Gonzales)	278.46
Braly, Helen	1,202,56

(2) "Group B" — judgment in the amount of $136,137.73, plus interest at the rate of nine (9%) percent per annum, as follows:

Kennedy, Martha	15,339,97
Poss, Frances	29,285.26
Hall, Rose	34,425.09
Tabb, Mary	21,620.12
Cordova, J.	17,408.63
Williams, Virginia	18,058.66

(3) "Group C" — judgment in the amount of $21,372.30, plus interest at the rate of nine (9%) percent per annum, as follows:

Bradfield, Kathleen	3,965.54
Campos, G.	3,806.40
Sanchez, B. L.	2,834.59
Echavarria, M.	1,045.80
Wagnon, B. A.	793.00
Collett, M. E.	1,411.17
Bunch, P. S.	709.20
Gurrola, S.	2,038.10
Juarez, U.	4,768.50

It is further ORDERED AND ADJUDGED that the named Plaintiff CHRISTINE VAUGHT recover of the Defendant LEE VISION CENTER, INC. the sum of $5,201.80, with interest thereon at the rate of nine (9%) percent per annum as provided by law.

It is further ORDERED, ADJUDGED AND DECREED that Defendant shall immediately adjust its wage structure and

policies so as to pay male and female managers equally, commensurate with the criteria ordered herein; and further, Defendant is hereby permanently enjoined from discriminating against female employees on account of their sex with regard to comparable rates of pay, promotion, job assignment, and other terms and conditions of employment.

A motion having been submitted to the Court by the Plaintiffs for attorney's fees and expenses, and the Court having considered the said motion, it is further ORDERED AND ADJUDGED that said motion concerning attorney's fees, costs and necessary expenses be implemented as follows:

(1) DON D. DAUGHERTY and HENRY M. ROSENBLUM have expended nine hundred hours in connection with this litigation, and that upon final resolution of appeals, if any, they will be entitled to ninety thousand dollars ($90,000) in attorney's fees for services rendered through March 7, 1979, with interest thereafter at the rate of nine (9%) percent, providing Defendant-Appellant does not prevail upon appeal. The claims of all other attorneys for Plaintiffs are hereby denied.

(2) Plaintiffs are entitled to twelve thousand dollars ($12,000) for necessary expenses and costs incurred through March 7, 1979, with interest thereafter at the rate of nine (9%) percent.

(3) In the event an appeal is pursued by the Defendant, and attorney's fees are assessed against the Defendant, Plaintiffs' attorney's fees will be at the same rate as provided for in No. (1) above, not exceeding ten thousand dollars ($10,000).

(4) As to court proceedings on remand, if any, upon which Plaintiffs prevail, the Court shall assess attorney' fees, costs and necessary expenses, if any.

The clerk will furnish a copy hereof to each attorney.

DATED this 26th day of April, 1979.

HALBERT O. WOODWARD
Chief Judge
Northern District of Texas

APPROVED AS TO FORM ONLY:

RON D. DAUGHERTY
Ron D. Daugherty, *Attorney for Plaintiff*

HENRY M. ROSENBLUM
Henry M. Rosenblum, *Attorney for Plaintiff*

HENRY KLEPAK
Henry Klepak, *Attorney for Defendant*

RICHARD A. SINZINGER
Richard A. Sinzinger, *Attorney for Defendant*

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 79-2711

Summary Calendar*

CHRISTINE VAUGHT, Individually and on behalf of all others similarly situated,

Plaintiff-Appellee,

versus

LEE VISION CENTER, INC.,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Texas

---

(February 29, 1980)

Before BROWN, TJOFLAT and FRANK M. JOHNSON, JR., Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

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* Fed. R. App. P. 34(a); 5th Cir. R. 18.

[1] See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.

UNITED STATES COURT OF APPEALS
Fifth Circuit
Office of the Clerk

Gilbert F. Ganucheau
Clerk

Tel. 504-589-6514
600 Camp Street
New Orleans, La. 70130

April 8, 1980

TO ALL PARTIES LISTED BELOW:

No. 79-2711

CHRISTINE VAUGHT, ETC.,

v.

LEE VISION CENTER, INC.

Dear Counsel:

This is to advise that an order has this day been entered denying the petition ( ) for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16) the petition ( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

GILBERT F. GANUCHEAU, Clerk

By SALLY HAYWARD
Deputy Clerk

cc: Messrs. Richard Sinzinger
Henry Klepak

Messrs. Henry M. Rosenblum
Ron D. Daugherty

UNITED STATES COURT OF APPEALS
Fifth Circuit
Office of the Clerk

Gilbert F. Ganucheau
Clerk

Tel. 504-589-6514
600 Camp Street
New Orleans, La. 70130

April 30, 1980

Mr. Richard Sinzinger
KLEPAK & PASLEY
1712 Commerce St.
Dallas, TX 75201

No. 79-2711

CHRISTINE VAUGHT, ET, AL.

v.

LEE VISION CENTER, INC.

MANDATE STAYED TO AND INCLUDING
MAY 28, 1980 (SEE ORDER)

Dear Counsel:

The court has this day granted a stay of the issuance of the mandate to the date as shown above. If during the period of the stay there is filed with the clerk of this court a notice from the clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari, the mandate will issue immediately under Rule 41, FRAP.

Under revised Rule 21(1) of the Supreme Court effective July 1, 1970, a record is no longer required in connection with an application for writ of certiorari, and therefore will not be routinely prepared by this office (38LW 3502).

A copy of the opinion, if any, judgment, or Rule 21 decision, and the denial of rehearing are still required by the Supreme Court to be incorporated as an appendix to your petition.

Enclosed are copies of the said documents which have been entered in this cause.

Very truly yours,

GILBERT F. GANUCHEAU, Clerk

BRENDA HAUCK
Deputy Clerk

/bh

enc.
cc: (LETTER & ORDER)
Messrs. Henry M. Rosenblum
Ron D. Daugherty

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 79-2711

CHRISTINE VAUGHT, Individually and on behalf of all others similarly situated,

Plaintiff-Appellee,

versus

LEE VISION CENTER, INC.,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Texas

---

ORDER:

( ) The motion of
for stay of the issuance of the mandate pending petition for writ of certiorari is DENIED.

(✓) The motion of Appellant for stay of the issuance of the mandate pending petition for writ of certiorari is GRANTED to and including May 28, 1980, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition has been filed. The Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

( ) The motion of .....
for a further stay of the issuance of the mandate is GRANTED to and including .....,
under the same conditions as set forth in the preceding paragraph.

( ) IT IS ORDERED that the motion of .....
..... for a further stay of the issuance of the mandate is DENIED.

FRANK M. JOHNSON, JR.
United States Circuit Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 879-2711

CHRISTINE VAUGHT, Individual and on behalf of all others similarly situated,
Plaintiff-Appellee,

versus

LEE VISION CENTER, INC.
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Texas

---

ORDER:

IT IS ORDERED that the motion of appellant to set aside separate award of plaintiff attorney fees is DENIED.

FRANK M. JOHNSON, JR.
U. S. Circuit Judge